

In re Patent Application S.N. 09/784,692
Response to January 24, 2005 Office Action

REMARKS

1. *Status of the Application.* The Examiner's courtesy and assistance during telephone communications with the undersigned relating to the present application is gratefully acknowledged.

Claims 1 through 8 and 10-11 are pending in the application as amended herein. In the Office Action, claims 1-11 (in their form prior to amendment herein) were rejected under 35 U.S.C. §§ 112 and 103. Claims 1-6 are amended herein, and claim 9 is cancelled herein. No new matter is added by way of these amendments.

2. *The Drawings Objections.* The Office Action states that "the Applicant has not responded to a previous objection based on Draftsperson's Patent Drawing Review included with the Office Action mailed on 19 November 2003." This is not accurate. In response to a prior Office Action dated August 24, 2004, the Applicant submitted, on September 21, 2004, a Response which included amendments to paragraphs [0019] and [0020]. These amendments addressed the prior objection to the drawings, namely that the drawings contained reference numerals not mention in the Specification. The noted amendments to paragraphs [0019] and [0020] cured this deficiency.

3. *Section 112 Rejections.* In the Office Action, claims 1 through 11 were rejected under 35 U.S.C. § 112 as "failing to comply with the written description requirement thereof. According to the Office Action, the recitation of prospective recipient preferences "includ[ing] at least one start date and at least one end date, collectively defining at least one time interval, designated by the prospective recipient, during which the prospective recipient would prefer to have the at least two orders delivered" was not supported in the specification, either expressly, implicitly, or inherently.

The applicant respectfully challenges the basis for this rejection. The Specification is replete with references to the specification of a time interval during which gift orders are to be delivered. Some examples include:

- "...then the flowers or other gifts could be delivered over a period of time, *and not all on the same day....*" (page 1, ¶ [0004]) (emphasis added).

In re Patent Application S.N. 09/784,892
Response to January 24, 2005 Office Action

Best Available Copy

- "...and the orders are filled over a preselected period of time..." (page 1, ¶ [0006]).
- "...whereby ordered goods are delivered over a predetermined period of time...." (page 1, ¶ [0007]).
- "...and the system provides the capability of delivering some flowers to the newlyweds before their honeymoon and some to them after they return...." (page 1, ¶ [0007]).
- "...and for the delivery of merchandise over a specified time before and after the baby arrives...." (page 1, ¶ [0008]).
- "...bus is particularly well adapted to deliver flowers and other perishable goods so that they are not all provided at the same time...." (page 1, ¶ [0008]).
- "That way, the requested goods, particularly perishable goods such as cut flowers, are not all delivered at the same time." (page 2, ¶ [0018]).
- "...the system schedules delivery or filling of the orders at different times, i.e. over a time period." (page 2, ¶ [0020])

It is respectfully submitted that language such as the foregoing provides more than ample support for the claim language alleged in the Office Action not to be supported. A "predetermined time period" or "preselected period of time" by definition must have a "start date" and an "end date." There is simply no other way to define "a predetermined time period" or "a preselected period of time" without specifying a beginning and an end thereof.

Notwithstanding the Applicant's challenge to the Office Action's allegations, the claims have been amended herein to recite "a preselected period of time" during which perishable goods are to be delivered to a prospective recipient. This phraseology finds abundant, word-for-word support in the specification, as exemplified by the foregoing excerpted passages.

The claims were further rejected under § 112 based on a perceived confusion over use of the terms "registrants" and "recipients." The claims have been amended herein to incorporate language "registrant as a prospective recipient" and "purchasing registrant" in order to overcome any potential confusion.

In re Patent Application S.N. 09/784,692
Response to January 24, 2005 Office Action

In view of the foregoing, reconsideration and withdrawal of the § 112 rejections is hereby requested.

4. *The Section 103 Rejection.* In the Office Action, claims 1-11 were rejected as being unpatentable over U.S. Patent No. 6,609,106 ("*Robertson*") in view of U.S. Patent No. 5,809,479 to Martin et al. ("*Martin*").

The Office Action acknowledges that *Roberston* fails to disclose "filling at least two orders over a predetermined period of time by delivering the perishable goods to the prospective recipient on at least two different days." Then, the Office Action states that "*Martin* teaches customers specifying early and late delivery limits which specify on-time windows relative to delivery dates which are requested or expected by the individual customers." The Office Action then concludes that "it would have been obvious to modify the method of *Robertson* to include early and late delivery date limits as taught by *Martin*."

The Applicant respectfully challenges this reasoning. To avoid repetitiveness, the undersigned hereby incorporates by reference herein the Applicant's remarks, made in response to the prior August 24, 2004 Office Action, relative to the proposed hypothetical combination of *Robertson* and *Martin*. It is believed that those remarks continue to apply to the renewed § 103 rejection, notwithstanding the Office Action's reformulation and further articulation of the rejection.

To summarize, it is submitted that (1) *Martin* relates to entirely different subject matter than that of the present invention (i.e., so-called "just-in-time" supply arrangements), whereas The Applicant's invention, on the other hand, relates to gifting transactions involving a "prospective recipient," a seller of goods, and a "purchasing recipient" (i.e., a gift-giver); (2) the Office Action fails to identify any suggestion or motivation to make the proposed hypothetical combination. See M.P.E.P. § 706.02(j); and (3) even if one assumes that the combination of *Robertson* and *Martin* was considered, that combination would not achieve the same result as the present invention.

In re Patent Application S.N. 09/784,692
Response to January 24, 2005 Office Action

Finally, the Applicant sees no basis for the Office Action's conclusive, and essentially unsubstantiated assertion "it would have been obvious" to modify the proposed hypothetical combination of *Robertson* and *Martin* to achieve a system which provides for delivery on two different dates. Indeed, this allegation contradicts the position taken earlier in the Office Action that a "preselected time interval" does not inherently or implicitly encompass a "start date" and an "end date."

In view of the foregoing, Reconsideration and withdrawal of the § 112 rejections is respectfully requested.

< Remainder of page left intentionally blank >

FROM

(WED) FEB 23 2005 13:20/ST. 13:17/NO. 6329645462 P 11

In re Patent Application S.N. 09/784,892
Response to January 24, 2005 Office Action

In view of the foregoing amendments and remarks, it is respectfully submitted that the claims recite combinations of elements neither taught nor suggested by the prior art, and that the application as a whole is in proper form and condition for allowance. Reconsideration and withdrawal of the rejections is requested. If the Examiner believes that additional or alternative amendments might place the application in better condition for allowance, he is invited to contact the undersigned at the number listed below.

Respectfully submitted,

Date: 23-FEB-2005

Hugh R. Kress

Hugh R. Kress
Reg. No. 36,574
BROWNING BUSHMAN P.C.
5718 Westheimer
Suite 1800
Houston, Texas 77057
713.266.5593 (voice)
713.266.5169 (fax)

APPLICANT REPRESENTATIVE

Best Available Copy